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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/604,283	07/08/2003	Matthew A. Johnson	716138.11	1282
27128	7590	07/12/2005	EXAMINER	
BLACKWELL SANDERS PEPPER MARTIN LLP			PATEL, TAJASH D	
720 OLIVE STREET			ART UNIT	PAPER NUMBER
SUITE 2400				3765
ST. LOUIS, MO 63101			DATE MAILED: 07/12/2005	

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>
	10/604,283	JOHNSON, MATTHEW A.
	<b>Examiner</b>	<b>Art Unit</b>
	Tejash D. Patel	3765

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 08 July 2003.
- 2a) This action is FINAL.                            2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 1-19 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) 17 and 18 is/are allowed.
- 6) Claim(s) 1,9 and 19 is/are rejected.
- 7) Claim(s) 2-8 and 10-16 is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
  - a) All    b) Some \* c) None of:
    1. Certified copies of the priority documents have been received.
    2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
    3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | Paper No(s)/Mail Date. _____  |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>8/6/04, 11/12/04, 11/6/03, 11/5/03, 9/22/04</u> | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
|  | 6) <input type="checkbox"/> Other: _____                                    |

## **DETAILED ACTION**

### ***Double Patenting***

1. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

2. Claims 1-18 are provisionally rejected under the judicially created doctrine of double patenting over claims 1-17 of copending Application No. 10/708,313. This is a provisional double patenting rejection since the conflicting claims have not yet been patented.

The subject matter claimed in the instant application is fully disclosed in the referenced copending application and would be covered by any patent granted on that copending application since the referenced copending application and the instant application are claiming common subject matter, as follows: The claims pending in pending application '283 are substantially similar in scope to the claims which pertain to a cut away vest having a retainer system as disclosed by copending application '313..

Furthermore, there is no apparent reason why applicant would be prevented from presenting claims corresponding to those of the instant application in the other copending application. See *In re Schneller*, 397 F.2d 350, 158 USPQ 210 (CCPA 1968). See also MPEP § 804.

***Claim Rejections - 35 USC § 102***

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

4. Claims 1 and 9 are rejected under 35 U.S.C. 102(e) as being anticipated by D'Annunzio (US 6,769,137). D'Annunzio discloses away vest (10) including first and second torso panels (20,50) such that shoulder straps (60) of the first panel extends to the second panel being defined by a free end having a first connector element as shown in figure 2. Further, a waist belt (30) has a free end connecting to a lower portion of one of the first and second torso panels to the other of the first torso panel and second torso panel, col. 3, lines 36-54. In addition, the belt side portion has at least one second connector element being selectively connected to the second torso panel as shown in figure 8. Furthermore, a flexible retainer element (80) carried by one of the first and second torso panels is releasably retained by the first and second connector element as shown in figures 2 and 4. A portion of the retainer element is movable from the connector to a curved body portion of the vest to release the first and second connector elements from the respective connector device, col. 4, lines 16-51.

***Claim Rejections - 35 USC § 103***

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claim 19 is rejected under 35 U.S.C. 103(a) as being unpatentable over D'Annunzio in view of Kirk et al. (US 5,724,707). D'Annunzio set forth the invention as set forth above I paragraph 4 except for showing a plurality of spaced apart loops on the vest with a pouch having a strap extending through the loops.

Kirk et al as structured vest having a plurality of spaced apart loops with a pouch having a strap extending through the loops as shown in figures 1-4.

It would have been obvious to one skilled in the art to provide the vest of D'Annunzio with a plurality of spaced apart loops on the vest with a pouch having a strap extending through the loops as taught by Kirk et al so that the user can carry any desired items within the pouches when the vest is adjustably worn about the body or as required for a particular application thereof.

***Allowable Subject Matter***

7. Claims 2-8 and 10-16 would be allowable if rewritten or amended to overcome provisional rejection made under the judicially created doctrine of double patenting, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.

8. Claims 17 and 18 would be allowable if rewritten or amended to overcome provisional rejection made under the judicially created doctrine of double patenting, set forth in this Office action.. Claims 17 and 18 are allowable because the prior art does not teach or suggest the recitation therein including a cut away vest shoulder straps with a first connector element, a waist belt having a second connector element and a cummerbund having a third connector element in combination a flexible retainer element is releasably engaged with the first, second and third connectors.

***Conclusion***

9. The prior art made of record and not relied upon is considered pertinent to Applicant's disclosure.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Tejash Patel whose telephone number is (571) 272-4993. The fax phone number for this group is (571) 273-8300

July 7, 2005



**TEJASH PATEL  
PRIMARY EXAMINER**